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ATTORNEY FOR APPELLEE:

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KAY WALSER,)
)
Appellant-Defendant,)
)
vs.) No. 18A02-0712-CV-1133
)
DONNA WILKINS, Health Officer of)
Delaware County,)
)
Appellee-Plaintiff.)

BAKER, Chief Judge

Appellant-defendant Kay Walser appeals the trial court's order affirming the decision of the Delaware County Health Department (Health Department) that directed Walser to vacate, demolish, and properly dispose of his mobile home. Walser argues that this matter should have been filed as a new complaint rather than folded into previously-filed litigation concerning other health and safety complaints regarding his property. He also contends that the evidence is insufficient to support the judgment. Finding no error, we affirm.

FACTS

Walser owns a mobile home in Delaware County. On January 29, 2004, the Health Department filed a complaint against Walser seeking injunctive relief and a declaration that Walser's property was a public nuisance:

5. The Health Department has been made aware . . . of a situation that exists on [Walser's] property . . . which may promote, transmit or generate disease to wit, that said residence contains excessive junk and weeds. The junk and weeds are conducive for a potential rodent and insect problem, and the conditions of the home are unsafe and unfit and may transmit and generate disease.
6. That the Health Department has determined said dwelling to be unfit for human habitation and that the existence on the premises is of an unsanitary condition that is likely to cause sickness among the occupants of the dwelling.
7. That pursuant to I.C. 16-51-20-1 and 16-51-20-6 the Plaintiff requests the Court to declare the above referred to premises as unfit for human habitation and a public nuisance and further requests the abatement of said nuisance.

Appellant's App. p. 22. On February 27, 2004, Walser admitted that his property was not in compliance with the relevant statutes and was given thirty days to bring the property into substantial compliance. The cause was then continued a number of times. On February 18,

2005, a hearing was held and it was established that Walser had made “some, but not complete, progress,” and the trial court gave him more time to bring his property into compliance. Id. at 6. After additional continuances were granted, on April 27, 2005, the trial court ordered Delaware County to clean up Walser’s property at Walser’s expense.

On July 1, 2005, the trial court entered an order that, among other things, finds that at that time, Walser’s property was still not in compliance with the relevant statutes.¹ On August 4, 2005, Wilkins filed a report to the court explaining as follows:

1. That on July 1, 2005 this Court gave Plaintiff the authority to enter onto [Walser’s] property to take whatever means necessary to bring the subject property into compliance with the Delaware County health codes.

3. That the Plaintiff hired Barber Contracting, who entered the property and have brought said property into compliance with the Delaware County health codes.

Id. at 33.

On September 5, 2006, the Health Department received a new complaint about Walser’s property—specifically, that the septic system was not functioning properly and that the mobile home was “full of stuff.” Id. at 36. On September 11, 2006, the Health Department filed a petition to enter and inspect Walser’s property, and on September 22, 2006, the trial court granted the petition.

On October 3, 2006, after inspecting the property, the Health Department left an official notice for Walser of unlawful conditions on the property, including a total septic

system failure, a leaking bathroom sink, a saturated bathroom floor, a non-functioning toilet, no light fixtures, exposed wiring, feces on the floor in the living room, unchanged litter boxes, rooms filled with clutter, rodent-harboring conditions, a leaking kitchen sink, and a lawn that had not been mowed. Id. at 42. Walser was ordered to take certain specific corrective actions by October 8. Additionally, the Health Department left an official notice declaring that the dwelling was unfit for human habitation because of the septic failure and ordered Walser to vacate the property by October 8. On October 10, 2006, the Health Department again found the property to be unfit for human habitation and a public nuisance and ordered that it be demolished and removed.

On October 13, 2006, Walser filed a “Motion to Object and Request for Stay of Order” and a “Petition for Judicial Review,” which is not included in the record on appeal. Following a hearing, the trial court entered an order on November 14, 2006, that, among other things, granted Walser’s petition for judicial review and scheduled it for a hearing.² On April 6, 2007, the trial court inspected the property with the parties and their attorneys present. On April 16, 2007, the trial court held a hearing on Walser’s petition for judicial review of the Health Department’s orders, and on April 23, 2007, ordered Walser to vacate, demolish, and properly dispose of the mobile home, directing the Health Department to carry out the order if Walser failed to do so. Walser now appeals.

¹ The full text of the order is not included in the record on appeal.

² On November 28, 2006, the case was transferred to Judge Feick and assigned a new cause number—the one referred to herein.

DISCUSSION AND DECISION

As we consider Walser's arguments, we note that a reviewing court must apply a de novo standard of review to the demolition order. Ind. Code § 36-7-9-8(c). Under de novo review, a court may,

to a limited extent, weigh the evidence supporting the finding of fact by the enforcement authority. The court may negate the finding only if, based upon the evidence as a whole, the finding of fact was arbitrary, capricious, an abuse of discretion, unsupported by the evidence, or in excess of statutory authority.

Kopinski v. Health & Hosp. Corp. of Marion County, 766 N.E.2d 454, 454-55 (Ind. Ct. App. 2002). "The term 'de novo' in statutes providing for judicial review of administrative orders does not authorize a trial court to substitute its judgment for that of the agency below." Kollar v. Civil City of South Bend, 695 N.E.2d 616, 619 (Ind. Ct. App. 1998).

Walser first argues that the trial court's demolition order was improper because the original complaint, filed on January 29, 2004, stemmed from different violations that Walser eventually remedied. According to Walser, allegations about his septic system should have been filed as a new, independent complaint rather than folded into litigation that, according to Walser, had already been resolved in his favor. Even if we accept for argument's sake that Walser's argument has merit, we observe that he neither raised this argument to the trial court nor requested that the Health Department file a new complaint based on the septic system failure. Thus, we find that he has waived this argument.

Next, Walser essentially argues that the evidence supporting the trial court's order is insufficient. At the hearing, Christine Dely Stinson, an employee of the Health Department, testified that she recommended that the mobile home be demolished because

[i]t's not up to building codes. It's on a, not on a permanent foundation at all. It's on cinder blocks that are sinking into the ground. They're unstable. The biggest concern is the failed septic system. That's definitely a public health issue that's affecting lots of people. The dilapidation of the trailer affects more [than] just Mr. Walser, where the failure of the septic system is definitely affecting other people.

Tr. p. 178-79. The Health Department ordered Walser to remedy the unsafe conditions on his property on or before October 10, 2006, and as of March 29, 2007, he had failed to do so.

The trial court had an opportunity to inspect the property with the parties and their attorneys present, and given Stinson's testimony, we will not second-guess the trial court's determination that the mobile home must be demolished. We find the evidence sufficient to support the trial court's order.

The judgment of the trial court is affirmed.

ROBB, J., concurs.

RILEY, J., concurs in result.